



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Interstate Diesel Services, Inc.
File: B-232668.2
Date: October 28, 1988

DIGEST

1. Agency acts properly in refusing to accept offer of rebuilt supplies where solicitation stated that "[p]roposals for rebuilt assemblies will not be considered."
2. Where a request for best and final offers for supplies is accompanied by a solicitation amendment calling for prices for new material only and stating that proposals for rebuilt supplies would not be considered, protest of such amendment filed after the closing date for receipt of best and final offers is untimely.

DECISION

Interstate Diesel Services, Inc. protests the Defense Logistics Agency's refusal to accept its proposal for rebuilt supplies under request for proposals (RFP) No. DLA700-87-R-1963. Essentially, Interstate protests an amendment to the RFP which stated that only new materials would be considered and that rebuilt assemblies would not be considered.^{1/} This change was incorporated into the RFP after receipt of initial proposals, but prior to the closing date for receipt of best and final offers (BAFOs). In light of the amendment, we find that Interstate's protest of the agency's refusal to accept its rebuilt supplies lacks merit

^{1/} Interstate also alleges that the agency allowed the acceptance period for the low offer for new parts to expire. The agency reports that this is not the case.

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and we dismiss the protest of the amendment as untimely filed.^{2/}

Interstate claims that since it submitted the apparent low offer for rebuilt supplies, the agency improperly refused to accept its offer. The agency contends that although Interstate's offer for rebuilt supplies was low, rebuilt parts were prohibited by solicitation amendment, and its offer for new materials was not low.

By amendment issued on April 27, 1988, and acknowledged by the protester in its BAFO, the agency stated that only offers for new supplies would be accepted and that rebuilt assemblies would not be considered. Accordingly, since Interstate submitted rebuilt parts which were not permitted by the revised solicitation, we have no basis to question the rejection of its offer of rebuilt supplies. See Coopervision, Inc., B-231745, July 1, 1988, 88-2 CPD ¶ 3.

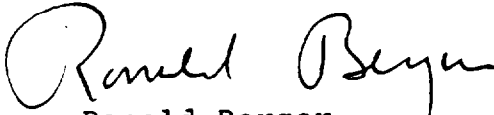
Moreover, to the extent Interstate protests the amendment itself, we find its protest untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), require that to be timely a protest of an alleged solicitation impropriety that did not exist in the solicitation as issued initially, but subsequently was incorporated into it, be filed before the next closing date for receipt of proposals following the incorporation of the alleged impropriety. See Teledyne CME, B-228368, Oct. 27, 1987, 87-2 CPD ¶ 404. Accordingly, Interstate was required to file a protest concerning the amendment prior to the closing date for the submission of BAFOs. Interstate, did not do so, but instead submitted a timely revised proposal acknowledging receipt of the amendment. Thus, the protest, filed only after Interstate learned it was not the apparent low offeror for the required new materials, is untimely. See T.W. Hollopeter & Assocs., B-227804, July 30, 1987, 87-2 CPD ¶ 118.

Interstate requests reimbursement of its protest costs. Our authority to allow the recovery of the costs claimed by Expertware is predicated upon a determination by our Office that the solicitation, proposed award or award of a contract

^{2/} We are dismissing this protest pursuant to 4 C.F.R. § 21.3(m) of our Bid Protest Regulations, which provide for dismissal of a protest when the propriety of a dismissal becomes clear after information is provided by the contracting agency.

does not comply with a statute or regulation. 31 U.S.C. 3554(c)(1) (Supp. IV 1986). Since we make no such determination here, there is no basis for award of costs. Interstate Diesel Service, Inc., B-229610, Feb. 17, 1988, 88-1 CPD ¶ 162.

The protest is dismissed.

A handwritten signature in cursive script, reading "Ronald Berger".

Ronald Berger
Associate General Counsel